ACT Electoral Commission submission to the ACT Legislative Assembly Standing Committee on Justice and Community Safety in relation to its inquiry into the ACT Electoral Commission *Report on the ACT Legislative Assembly Election 2008* and Electoral Act amendment bills 2011

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30 June 2011

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Terms of reference of this inquiry

At its meeting of 7 April 2011, the ACT Legislative Assembly passed the following resolution:

That the ACT Electoral Commission's report, entitled *Report on the ACT Legislative Assembly Election 2008*, the Electoral Legislation Amendment Bill 2011 and the Electoral (Casual Vacancies) Amendment Bill 2011 be referred to the Standing Committee on Justice and Community Safety for inquiry and report to the Assembly by 22 September 2011.

In conducting this review the Committee should have regard to a range of issues including but not limited to:

1) the ACT Electoral Commission's Report on the ACT Legislative Assembly Election 2008;

2) the amendments proposed to be made by the Electoral Legislation Amendment Bill 2011;

3) the amendments proposed to be made by the Electoral (Casual Vacancies) Amendment Bill 2011;

4) the application of the Proportional Representation (Hare-Clark) Entrenchment Act 1994 to the Electoral (Casual Vacancies) Amendment Bill 2011; and

5) any other relevant matter.

Introduction

The ACT Electoral Commission (the Commission) provides this submission in response to an invitation issued by the Chair of the Standing Committee on 20 May 2011.

This submission is made pursuant to section 7(1)(d) of the *Electoral Act 1992* which empowers the Commission to provide information and advice to the Legislative Assembly in relation to elections.

After every ACT Legislative Assembly, the ACT Electoral Commission routinely prepares a report on the conduct of the election. These reports typically describe the conduct of the election by the Commission, present facts and figures about the election, analyse the operation of the electoral legislation and make recommendations or suggestions for changes to electoral legislation for future elections.

In its *Report on the ACT Legislative Assembly Election 2008,* the Commission noted that several other Australian parliaments, including the Commonwealth and the States of New South Wales, Victoria and Queensland, have advanced electoral reform in their jurisdiction through ongoing parliamentary committees tasked with routinely examining electoral matters. The Commission suggested that consideration be given to tasking an Assembly committee with a specific standing brief to consider and report on the conduct of each Legislative Assembly general election, and other relevant electoral matters.

While the present Committee inquiry is not framed in terms of a standing brief to consider and report on the conduct of each Legislative Assembly general election, nevertheless it is welcomed by the Commission as the first occasion on which a Committee of the Legislative Assembly has been tasked with a general inquiry into the conduct of an ACT general election. Given the success of the "electoral matters committee" format in other jurisdictions, the Commission considers the establishment of this inquiry as a positive step for the electoral process in the ACT.

Issues addressed in this submission include:

- Notable features of elections for the ACT Legislative Assembly;
- Electoral reform developments in Australia;
- The ACT Electoral Commission's report on the 2008 election;
- Electoral Legislation Amendment Bill 2011;
- Electoral (Casual Vacancies) Amendment Bill 2011;
- Extending the right to cast a pre-poll vote to all electors;
- Authorisation of double-sided stickers containing electoral matter;
- Defamation of candidates;
- Increasing the penalty notice fine for failure to vote;
- Electoral enrolment;
- Party registration;

- Electoral funding and financial disclosure issues;
- Redistribution of electoral boundaries;
- The size of the Legislative Assembly and the number of members to be elected in each electorate;
- Statutory independence; and
- Election information and communication technology systems.

Recommendations

The Commission has made the following recommendations in this submission.

Recommendation 1
The Commission **recommends** that the Electoral Legislation Amendment Bill 2011 be amended to provide for an amendment to section 107 of the Electoral Act (Withdrawal of consent to nomination) to permit a registered officer to cancel a nomination of one or more candidates not later than the hour of nomination, where the party's nomination of all its candidates for an electorate would otherwise have to be rejected in accordance with the new section 106 of the Electoral Act. (*See page 17.*)

Recommendation 2
The Commission **recommends** that the Assembly notes that, if the Electoral (Casual Vacancies) Amendment Bill 2011 is passed by a simple majority but not a 2/3 majority of MLAs, the operation of the Proportional Representation (Hare-Clark) Entrenchment Act and the Referendum (Machinery Provisions) Act would automatically refer the Bill to a referendum to be held at the next general election of the Assembly, with the inevitable associated costs for holding a referendum, including printing and counting ballot papers and printing and distributing information material. (*See page 21.*)

Recommendation 3
If the Electoral (Casual Vacancies) Amendment Bill 2011 appears to have the support of a simple but not a 2/3 majority of MLAs, the Commission **recommends** that the Assembly carefully consider whether it is prepared to put the Bill to a vote given that a referendum would be a statutorily inevitable consequence of passage with less than a 2/3 majority. (*See page 21.*)

Recommendation 4
If the Electoral (Casual Vacancies) Amendment Bill 2011 is not passed by the Assembly, the Commission **recommends** that the Assembly consider amending the Electoral Legislation Amendment Bill 2011 to remove the provision limiting each party to only being able to nominate up to the number of candidates to be elected in each electorate, and to introduce a complementary amendment to explicitly provide for the format of a ballot paper where a party's candidates are split between two columns because it has nominated more candidates than the number of vacancies.
(*See page 22.*)

Recommendation 5
The Commission **recommends** that the Committee consider the arguments for and against amending the Electoral Act to provide that any elector may vote at a pre-poll voting centre, without the need to declare that they are unable to attend a polling place on polling day. (*See page 23.*)

Recommendation 6
The Commission **recommends** that the Committee consider amending the Electoral Act to address the issue of authorisation of double-sided stickers containing electoral matter. (*See page 24.*)

Recommendation 7
The Commission **recommends** that the Committee consider repealing the offence of defamation of a candidate in section 300 of the Electoral Act. (*See page 25.*)

Recommendation 8
The Commission **recommends** that the Committee consider whether the penalty notice fine for failing to vote at ACT Legislative Assembly elections should be increased. (*See page 26.*)

Recommendation 9
The Commission **recommends** that the Committee consider whether it would be appropriate for the ACT to implement automatic enrolment and/or election day enrolment, noting that the Commission's preferred enrolment model is to remain in step with the Commonwealth enrolment scheme. (*See page 29.*)

Recommendation 10
The Commission **recommends** that the Committee consider whether it would be appropriate for the ACT Government or Assembly to approach the Commonwealth to encourage it to adopt a national automatic enrolment scheme. (*See page 29.*)

Recommendation 11
The Commission **recommends** that section 39 of the Electoral Act be amended to provide that the Planning and Land Authority is not subject to direction from anyone (other than the Electoral Commissioner, for the efficient functioning of the Redistribution Committee) in the exercise of the Planning and Land Authority's functions as a member of the Redistribution Committee. (*See page 33.*)

Recommendation 12
The Commission **recommends** that section 47 of the Electoral Act be amended to provide that the Planning and Land Authority is not subject to direction from anyone (other than the Commission Chairperson, for the efficient functioning of the Augmented Electoral Commission) in the exercise of the Planning and Land Authority's functions as a member of the Augmented Electoral Commission. (*See page 33.*)

Recommendation 13
The Commission **recommends** that section 47 of the Electoral Act be amended to replace the reference to the Electoral Commissioner with a reference to the Commission Chairperson in relation to the existing provision that the Surveyor-General is not subject to direction in the exercise of the Surveyor-General's functions as a member of the Augmented Electoral Commission. (*See page 33.*)

Recommendation 14
The Commission **recommends** that the Committee note the precedent of the use of an indicative referendum as a means of resolving an impasse in relation to the ACT's electoral system in 1992, and that the Committee consider conducting an indicative referendum in concert with the 2012 election seeking the views of electors as to their preferred size of the Assembly, noting that to do so would require that the Commission be provided with additional resources to cover the costs of holding a referendum, including printing and counting ballot papers and printing and distributing information material. (*See page 35.*)

Notable features of elections for the ACT Legislative Assembly

Elections for the ACT Legislative Assembly began with some controversy in 1989, when the complications of the modified d'Hondt electoral system and a metre-long ballot paper led to a 2-month count to choose the Members for the first Assembly.

The second election, held in 1992, saw the innovative use of an indicative referendum giving ACT electors the choice of the Hare-Clark multi-member proportional representation electoral system or the single member electorates system as options to replace the discredited modified d'Hondt system. Over 65% of voters chose the Hare-Clark system.

The first two ACT elections were conducted by the Australian Electoral Commission under Commonwealth electoral laws. After the 1992 election, the Commonwealth parliament amended the *Australian Capital Territory (Self-Government) Act 1988* (the Self-Government Act) to give the ACT Legislative Assembly the power to legislate for the conduct of its own elections.

As a result, the ACT Electoral Commission was established in December 1992 under the *Electoral Act 1992* with three part-time members appointed for 12 months, with limited powers to conduct the first redistribution of the ACT into three electorates for the Legislative Assembly. After passage by the Legislative Assembly of comprehensive legislation giving effect to the people's choice of the Hare-Clark system in 1994, the ACT Electoral Commission was reconstituted in May 1994 with a full-time Electoral Commissioner, two part-time Commission Members, permanent staff employed under the public sector management legislation and casual staff employed under the Electoral Act.

The Commission conducted its first Legislative Assembly election in 1995, together with a referendum on entrenching the Hare-Clark electoral system. Since that election, the Commission has conducted general elections in 1998, 2001, 2004 and 2008. The next general election is due in October 2012.

From the 1995 election onwards, a feature of elections in the ACT has been the adoption of innovative practices to improve the process of conducting elections. The ACT has led electoral reform in a wide range of areas in Australia, with many other jurisdictions subsequently adopting reforms adopted for the first time in the ACT. While many of these innovations have now become standard practice, at the time of their introduction in the ACT they represented significant changes.

By any standard, this list of innovations and accomplishments is noteworthy. It is further worth noting that these achievements have been undertaken by the smallest electoral authority in Australia. The usual complement of the ACT Electoral Commission is one full-time statutory office holder, two part-time statutory office holders and five permanent staff members, two of whom work part-time for most of the electoral cycle.

Several factors have contributed to the ACT's record of electoral innovation. Since its inception, the ACT Electoral Commission has striven as an organisation to adopt a culture of continuous improvement. This attitude has driven much of the innovation experienced in the ACT. In addition – given that most electoral practices are prescribed by legislation – most of this innovation would not have been possible without the approval of the executive government and the parliament. Successive governments and parliaments in the ACT have been willing to legislate to adopt electoral reforms and innovations recommended by the Commission.

Another factor that has been a major contributor to the ACT's innovation success has been the size and nature of the ACT. As a relatively small, geographically compact city-state, with a well-educated urban population, the ACT has been able to adopt electoral innovations that would be more difficult to achieve in larger, more diverse jurisdictions. For example, the fact that the ACT was able to issue electronic votes to 20% of its voters at 5 locations at the 2008 election is a direct result of the small size of the ACT's population and city. Such an outcome would be difficult to achieve for a reasonable cost in any other Australian jurisdiction.

Some of the innovations adopted in the ACT are discussed below.

Electoral system development

While the ACT adopted the Hare-Clark voting and counting system modelled on the Tasmanian system, it introduced a number of changes intended to improve on the Tasmanian model by making the ACT system fairer and faster to count. These included:

- Simplifying the rules for determining a formal vote, so that any ballot paper with a unique first preference is considered a formal vote (in Tasmania, preferences must be shown for at least as many candidates as there are vacancies);

- Simplifying the counting rules so that ballot papers with the same transfer value are grouped together during the scrutiny, rather than being distributed over many different counts as under the Tasmanian system, leading to a faster count;

- Adjusting the counting rules so that surplus votes for elected candidates are given different values depending on whether or not they show further preferences for continuing candidates, leading to a fairer count;

- Implementing the "count back" system for filling casual vacancies, modelled on the Tasmanian system, with simplified counting rules to speed the count;

- Providing for an independent process for drawing electoral boundaries, modelled on the Commonwealth process, but tailored for the ACT's unique combination of two 5-Member electorates and one 7-Member electorate;

- "Entrenching" key principles of the electoral system, following the passage of a referendum in 1995 in which around 65% of electors voted in favour of adopting the *Proportional Representation (Hare-Clark) Entrenchment Act 1994*; and

- Moving from 3 year fixed parliamentary terms to 4 year fixed terms after the 2004 election.

Improving the voting experience

The ACT has adopted a range of measures to improve the voting experience by making it easier for electors to cast their votes, without compromising the integrity of the voting process. These measures included:

- Providing ordinary voting at every polling place for every electorate (where electors simply have their names marked of the rolls and they place their votes directly into a ballot box), replacing absent voting for electors voting outside their electorate (where electors have to fill in a declaration envelope, which must be processed after the polls close before the vote can be counted);

- Issuing pre-poll votes as ordinary votes, which are simply placed in a ballot box, as opposed to issuing declaration votes, which are enclosed in a declaration envelope and processed after polling closes;

- Issuing a pre-poll vote to any elector who claims that he or she expects to be unable to attend at a polling place on polling day, rather than requiring electors to provide a reason from a restricted list;

- Introducing, for the first time in Australia, an electronic voting system in polling places at the 2001 election;

- Providing secret voting facilities for blind and sight-impaired people, using electronic voting;

- Providing voting instructions in 12 different languages, using electronic voting;

- Introducing simplified processes for applying for a postal vote in 2008, including on-line and phone applications;

- Providing extensive electoral education and information resources on the Elections ACT website; and

- Extending the right to enrol and vote to all prisoners entitled to enrol for an ACT address in 2008, regardless of their length of sentence.

Improving the process of electoral administration

The ACT has adopted a range of measures to improve the process of conducting elections, to make elections more efficient and timely. These measures included:

- Running the election for all three electorates out of one office, with the Electoral Commissioner as the responsible returning officer, rather than appointing a separate returning officer for each electorate;

- Adopting a joint roll arrangement with the Commonwealth whereby changes to enrolment at the Commonwealth level automatically apply to the ACT roll;

- Using security printing techniques to print ballot papers on stock paper, rather than more expensive pre-watermarked stock;

- Reducing the time for receipt of postal votes to 6 days after polling day, thereby contributing to a faster finalisation of the result;

- Commencing the preliminary scrutiny of postal votes in the week before polling day, rather than waiting for polls to close, in order to allow postal votes to be opened and counted from the time the polls close on polling day; and

- Providing a 24 hour “breathing space” between the close of candidate nominations and the hour of nomination, when the nominations are publicly declared, giving the Electoral Commissioner time in which to give proper consideration to each nomination and to prepare for the draw for positions on the ballot paper.

Regulating the political process

The ACT has, like other Australian jurisdictions, adopted a range of measures to regulate the political process, tailored to suit the ACT's unique requirements. These measures included:

- Providing for a ban on canvassing within 100 metres of a polling place from the 1998 election, modelled on but simpler than the Tasmanian system;
- Adopting an electoral funding and financial disclosure regime modelled on the Commonwealth system – later amended to introduce a $1,000 disclosure threshold when the Commonwealth moved to increase its disclosure thresholds to over $10,000 in 2006;
- Introducing and refining a system of registration of political parties, with all parties currently required to demonstrate they have at least 100 members on the ACT electoral roll;
- Introducing simplified rules for authorisation of electoral material for the 2008 election; and
- Implementing new rules for grouping candidates on ballot papers for the 2008 election.

Using technology to improve the electoral process

The Commission has been very successful in implementing innovative and best practice information and communication technology (ICT) systems for managing and conducting Legislative Assembly elections in the ACT. These innovations included:

- As mentioned above, introducing, for the first time in Australia, an electronic voting system in polling places at the 2001 election, used again in 2004 and 2008;
- Introducing an electronic counting system at the 2001 election capable of taking electronic votes and data-entry of paper ballots;
- Using open-source software for the electronic voting and counting system (that is, software that is published on the internet so that the code used can be analysed by the public), to increase the transparency of the process;
- Using the electronic counting system to conduct count-backs to fill casual vacancies, resulting in faster and cheaper counts;
- Publishing details of all preferences on all ballot papers, increasing the transparency of the results and facilitating electoral research;
- Using manual data-entry of preferences shown on paper ballots at the 2001 and 2004 elections, to increase the accuracy of the count;
- For the first time in Australia for a parliamentary election, using an intelligent character recognition scanning system for capturing and counting preferences marked on paper ballots at the 2008 election, increasing both the accuracy and the speed of counting;

- Finalising the election result in record time in 2008, with the count concluded 7 days after polling day as a result of combining the scanning of paper ballots with electronic voting and the eVACS® counting system;

- Replacing printed electoral rolls in polling places with electronic rolls in 2008, resulting in efficiencies and environmental savings;

- Adopting an interactive electronic training manual for polling staff in 2008;

- Using an electronic display for the draw for positions on ballot papers; and

- Using an electronic projection of election results in the Tally Room and publishing progressively updated election results on the internet on and after election night.

Electoral reform developments in Australia

Modern electoral reform in Australia effectively commenced with the creation of the Australian Electoral Commission in 1984 as an independent statutory authority. Since that first commission was created, every Australian state and territory has established an independent electoral commission, culminating in the creation of the most recent electoral commission in South Australia in 2009. The ACT Electoral Commission was created in 1992.

The 1984 reforms to the Commonwealth electoral system set the scene for the electoral reforms that were taken up by the other Australian jurisdictions in the following decades. These fundamental reforms included creation of independent electoral management bodies, establishing processes for drawing electoral boundaries independent of parliamentary or executive approval, "one-vote, one-value" electoral boundary redistribution requirements, registration of political parties, electoral funding and financial disclosure schemes, computerised electoral roll maintenance, extended opportunities for exercising the franchise, and provision of electoral education and information programs.

One of the features of electoral reform in Australia has been the impact of the federal system of government. As each federal, state and territory parliament has responsibility for its own electoral arrangements, each jurisdiction has adopted electoral arrangements that are unique to that jurisdiction. While there is a lot of commonality between the various jurisdictions in their electoral systems – such as the establishment of independent electoral commissions and the use of preferential voting – there is also considerable variation in electoral practices across the different jurisdictions. For example, some jurisdictions require full preferential voting, some partial preferential and others fully optional preferential voting. Some jurisdictions have single member electorate lower houses, some have multi-member electorate lower houses. Some jurisdictions have an upper house, some do not. The list of variations is quite extensive.

This variety across jurisdictions has both benefits and disadvantages. From the voters' perspective, the differences across jurisdictions no doubt appear confusing, if not inconvenient, and in some cases can result in people inadvertently failing to cast a valid vote. This can be seen in the differences in informal voting rates between jurisdictions, no doubt partly attributable to the differences in the rules for defining informal votes relating to the adoption of full and optional preferential voting systems at different levels of government.

On the positive side, the ability for different jurisdictions to innovate has led to a wide range of improvements in processes and services that might not have been possible if one set of electoral rules had to be applied to every parliamentary election. As described above, the ACT has been able to introduce electoral innovations partly because it is a relatively small city-state, and also because it has an Electoral Commission and a legislature that have been prepared to take the risks inherent in introducing new procedures and technology. If electoral innovations in Australia were confined only to those changes that would be practicable at a national level, it is probable that many of the innovations adopted by the ACT and in other jurisdictions would not have seen the light of day.

Nevertheless, there are several aspects of Australian electoral arrangements that would benefit from a common national approach. The most obvious example of this is the national electoral roll. As the national electoral roll is used by all jurisdictions for elections for all levels of government, there are considerable advantages to adopting a common national franchise, with uniform methods for applying for enrolment and transferring enrolment within and between jurisdictions.

In 2008, the Australian Government embarked on a consultation process aimed at achieving national electoral reform. This process centred around the publication of two green papers. The Australian Government's first green paper, *Electoral Reform Green Paper – Donations, Funding and Expenditure* was released on 17 December 2008. The Australian Government's second electoral reform green paper, *Electoral Reform Green Paper – Strengthening Australia's Democracy* was released on 23 September 2009.

One of the stated aims of this process was to foster "harmonisation" As noted on page 2 of the second green paper:

> Federal, state and territory governments are increasingly working together in a range of forums to achieve greater harmonisation in a range of areas. Harmonisation offers a number of benefits including efficiencies, greater certainty, reduced compliance costs and improved effectiveness and integrity of laws. While there is considerable similarity in electoral processes across federal, state and territory jurisdictions, there are also considerable differences, and as a result there is scope for greater consistency. Opportunities to streamline exist in areas such as voting systems, electoral administration activities, enrolment requirements and processes, party registration requirements, campaign regulations and polling arrangements. Australians reasonably expect that our various election management bodies will be able to work cooperatively, so as to provide the best possible electoral services to all.

To date, there have been no significant attempts made by any Australian parliaments to work towards "harmonisation" of electoral practices as envisaged in the second green paper.

On the contrary, several jurisdictions have moved further away from the Commonwealth since the publication of the green papers. Both New South Wales and Victoria have implemented new enrolment procedures that are markedly different from uniform national practice in an attempt to address the apparent decline in the completeness of the electoral rolls. Both of these jurisdictions have recently adopted the process known as "direct enrolment" and have implemented schemes for enrolling electors on polling day. Queensland has also indicated that it is pursuing similar changes. (These changes are discussed further under **Electoral enrolment** below.)

The result of these changes made by individual states has been to move away from the concept of adopting one national electoral roll for all levels of government in all jurisdictions. These developments do not bode well for attempts to achieve harmonisation across jurisdictions.

These developments in turn have presented the ACT with the choice of remaining in step with Commonwealth electoral laws as far as practicable, particularly in relation to the electoral roll, or of deciding to adopt electoral reforms where they appear to be in the ACT's best interests, even if this means departing from the Commonwealth model.

Given that the Commonwealth push for harmonisation of electoral reform has not progressed, it may be appropriate for the ACT to continue to innovate of its own accord. At the same time, the ACT should be mindful of advances in other jurisdictions and aim to be consistent with them where there is advantage in doing so. For example, there may be considerable advantage in sharing ICT systems across jurisdictions.

The ACT Electoral Commission's report on the 2008 election

The Commission's report on the 2008 election indicated that the electoral process in the ACT continues to work well, and demonstrated that the Commission continues to deliver improved electoral services through innovative practice.

This submission does not propose to address the Commission's report in detail. The issues discussed in this submission will address matters raised in the Commission's report in the context of developments that have occurred since the report was published in September 2009.

The Commission made 16 recommendations in its report for consideration by the Legislative Assembly. The recommendations are listed on pages 3-4 of the report, and are included in this report at Attachment A. Eight of these recommendations have been adopted by the ACT Government and incorporated in the two electoral amendment bills currently before the Assembly and referred to this inquiry. These bills are discussed in the following sections.

The Electoral Legislation Amendment Bill 2011 gives effect to recommendations 1, 2, 3, 4, 6, 7 and 8. Recommendations 5 and 9 are contingent recommendations that would only come into play if recommendations 6 and 8 respectively were not adopted.

The Electoral (Casual Vacancies) Amendment Bill 2011 gives effect to recommendation 15.

Recommendations 10, 11, 12 and 14 were not adopted by the Government. These dealt with, respectively, extending access to pre-poll voting, amending authorisation provisions to cover double-sided stickers, repealing the offence of defamation of candidates, and increasing the penalty for failure to vote. These issues are discussed below.

Recommendation 13 related to disclosure issues, and suggested that disclosure should be referred to an Assembly committee in the light of the Australian Government's electoral reform green paper process examining donations, funding and expenditure. Subsequent to the Commission's report, on 19 November 2009 the Legislative Assembly referred the matter of campaign finance reform to the Standing Committee on Justice and Community Safety for inquiry and report. The Committee has yet to issue its report on this inquiry.

Recommendation 16 suggested that, if the size of the Assembly is to be changed prior to the 2012 election, all necessary legislative changes should be made by October 2010. As at June 2011, there have been no moves to increase the size of the Assembly before the 2012 election.

Electoral Legislation Amendment Bill 2011

The Electoral Legislation Amendment Bill 2011 enacts a number of amendments to the *Electoral Act 1992* and the *Electoral Regulation 1993*, and makes consequential amendments to the *Aboriginal and Torres Strait Islander Elected Body Act 2008*.

The amendments primarily arise from recommendations made by the Commission in its *Report on the ACT Legislative Assembly Election 2008*. Another amendment to lower the age of provisional enrolment arises from changes made in 2010 to the *Commonwealth Electoral Act 1918*.

The Bill:

- Lowers the age of entitlement to provisionally enrol to vote from 17 years old to 16 years old, to bring the ACT into line with recent changes to Commonwealth entitlements (the requirement that an elector be 18 years old before they can vote is not affected);

- Limits the number of candidates that may be nominated for an election in an electorate by a party to no more than the number of members of the Legislative Assembly to be elected for the electorate;

- Provides for the return of a candidate's deposit to the person who paid it, or to a person authorised in writing by the person who paid it;

- Provides that the certified list of electors used in polling places contain the year of birth and gender of each elector, to assist in correctly identifying electors as they vote, and provides that the extract of the certified list of electors provided to candidates will not contain the year of birth and gender of electors in order to protect their privacy;

- Allows the Electoral Commissioner to provide the extract of the certified list of electors to candidates in electronic form on request (currently only printed copies are provided);

- Removes the requirement for a person to sign as witness when a voter is casting a postal vote; and

- Provides flexibility to the Electoral Commissioner as to where the word "declaration" is to be printed in relation to the words "ballot paper" on declaration ballot papers.

The Bill also makes consequential amendments to the *Aboriginal and Torres Strait Islander Elected Body Act 2008*, which applies various provisions of the Electoral Act to the conduct of elections for the Elected Body.

This Bill gives effect to recommendations 1, 2, 3, 4, 6, 7 and 8 included in the Commission's election report. The Commission supports the measures contained in this Bill.

One of the amendments does not arise from a recommendation by the Commission in its report. The amendment to lower the age of provisional enrolment arises from changes made in 2010 to the Commonwealth Electoral Act. This amendment would lower the age of entitlement to provisionally enrol to vote from 17 years old to 16 years old.

The intent of this change is to increase the proportion of young people enrolled to vote when they turn 18. It is well established that a significant number of young people are not enrolled to vote when they turn 18. Lowering the age at which young people can provisionally enrol to 16 rather than 17 will mean that more young people can be encouraged to enrol during electoral education programs at schools and other electoral enrolment initiatives aimed at school students.

This change to the ACT's Electoral Act will not make a material difference to the current enrolment regime, as anyone who is enrolled on the Commonwealth electoral roll is automatically taken to be enrolled for ACT purposes. However, making this amendment will remove an apparent inconsistency between the ACT's Electoral Act and the Commonwealth Electoral Act. The Commission supports this amendment.

Scrutiny of Bills and Subordinate Legislation Committee concerns with clauses 7 and 8 of the Bill

On 29 April 2011, the Assembly's Scrutiny of Bills and Subordinate Legislation Committee commented on the Electoral Legislation Amendment Bill 2011. The Committee noted that clause 7 of the Bill proposes to insert new subsection 105(2A) of the Electoral Act, stating that the registered officer of a registered party must not nominate more people to be candidates for election in an electorate that the number of members of the Assembly to be elected for the electorate.

The Committee noted that clause 8 of the Bill, which would substitute a new section 106 of the Electoral Act, then provides that where the above situation occurs, the nomination of all candidates by that party for the electorate will be invalid if, at the hour of nomination for the election, the registered party officer has nominated more candidates in an electorate than the number of vacancies in the electorate.

The Scrutiny Committee stated that this clause appears to be an unduly harsh result, and could be incompatible with the right stated in paragraph 17(a) of the Human Rights Act, which deals with "taking part in public life". The Committee indicated that the relevant party should be afforded the opportunity to rectify a breach under the proposed section 105(2A) within some period of time after the hour of nomination.

The Commission accepts that the concerns noted by the Scrutiny of Bills and Subordinate Legislation Committee have merit. In practice, if a nomination was to be submitted that was invalid under the new provision, there would generally be time for the nominating party to correct the nomination and submit a revised nomination before the period for nominations closed. However, if a party was to leave its nomination until the last day, it is conceivable that a party may run out of time to submit a compliant nomination.

To address this possibility, the Bill could be amended to make use of the 24 hour period between the close of nominations and the "the hour of nomination" to give a party time to remove one or more candidates from its list of nominated candidates in order to ensure that it submits a compliant nomination. At present, section 107 of the Electoral Act allows the registered officer to cancel a nomination of a candidate for any reason up to 24 hours before the hour of nomination, when the period for making nominations closes. This deadline could be extended until the hour of nomination in this special case of a party nomination that would otherwise have to be rejected in its entirety.

Accordingly, the Commission recommends as follows:

- The Commission **recommends** that the Electoral Legislation Amendment Bill 2011 be amended to provide for an amendment to section 107 of the Electoral Act (Withdrawal of consent to nomination) to permit a registered officer to cancel a nomination of one or more candidates not later than the hour of nomination, where the party's nomination of all its candidates for an electorate would otherwise have to be rejected in accordance with the new section 106 of the Electoral Act.

Electoral (Casual Vacancies) Amendment Bill 2011

The Electoral (Casual Vacancies) Amendment Bill 2011 enacts a number of amendments to the casual vacancy provisions of the Electoral Act and makes consequential amendments to the Aboriginal and Torres Strait Islander Elected Body Act.

This Bill provides that where a casual vacancy arises and the vacating member was elected as a party candidate, and no unsuccessful candidates from that party apply to contest the vacancy, the vacancy would be filled by the Assembly appointing a person to fill the vacancy who has been nominated by the vacating member's party.

The Bill gives effect to recommendation 15 made by the Commission in its report on the conduct of the 2008 election.

Casual vacancies in the ACT Legislative Assembly are currently filled by conducting a count-back of the ballot papers used to elect the vacating member.

The count-back method of filling casual vacancies serves to preserve the integrity of the proportional representation aspect of the ACT's Hare-Clark system, as it enables the voters who elected the vacating member to choose that member's replacement. In practice, this has always meant that a vacating member of a particular political party has been replaced by a member of the same party, thereby retaining the party balance in the Assembly, which in turn reflects the will of the electorate at the relevant general election.

However, the Commission has noted that the count-back method will only operate as intended to preserve the proportional outcome of the original general election where there is at least one candidate of the vacating member's party available to contest the vacancy. Should a party member resign, and at least one unsuccessful candidate from that same party is not available to contest the vacancy, under the current law that vacancy would be filled by a candidate from a different party, or by an independent candidate. Arguably, such an outcome would not deliver a representative result, and might serve to alter the balance of power in the Legislative Assembly.

To address this issue, the Commission recommended that the Electoral Act be amended to provide that, where a casual vacancy arises and the vacating member was elected as a party candidate, and no unsuccessful candidates from that party apply to contest the vacancy, then the vacancy would be filled by the appointment method set out in section 195 of the Electoral Act.

Section 195 of the Electoral Act currently provides for the situation where a casual vacancy occurs and it is not practicable to fill the vacancy by count-back at all. Such a situation could arise either because of a technical difficulty (such as, in the days before electronic counting, where some or all of the ballot papers were destroyed by accident) or because no candidates applied to contest the vacancy.

Under section 195, if a vacancy cannot be filled by count-back, there is a mechanism for the Assembly to appoint a replacement member from the same party of the vacating member, where the vacating member belonged to a party, or to appoint a candidate with no party affiliation where the vacating member was not elected as a party candidate. This method is similar to the Senate casual vacancy rules which, like the ACT's count-back rules, are designed to preserve the proportionality of multi-member election outcomes.

This Bill would extend the operation of section 195 as described above.

The Bill also makes consequential amendments to the *Aboriginal and Torres Strait Islander Elected Body Act 2008*, which applies various provisions of the Electoral Act to the conduct of elections for the Elected Body. The effect of these amendments will be to leave the existing Elected Body rules essentially unchanged, as political party candidates are not recognised in elections for the Elected Body.

This proposed change to the casual vacancy rules is subject to the *Proportional Representation (Hare-Clark) Entrenchment Act 1994* (the Entrenchment Act). Section 4(1) of the Entrenchment Act provides that "This Act applies to any law that is inconsistent with any of the following principles of the proportional representation (Hare-Clark) electoral system: ... (l) where there are 2 or more eligible candidates in relation to a casual vacancy, the vacancy shall be filled by a recount of the ballot papers counted for the person who, at the last election before the vacancy occurred, was elected to the seat in which the vacancy has occurred." Section 5(2) of the Entrenchment Act provides that a law to which section 4 applies has no effect unless it is passed by at least a 2/3 majority of the Members of the Legislative Assembly, or passed by a simple majority of the Legislative Assembly and passed by a majority of electors at a referendum.

Consequently, to have effect, this Bill must be passed by at least a 2/3 majority of the Members of the Legislative Assembly, or be passed by a simple majority of the Legislative Assembly and passed by a majority of electors at a referendum.

Should the Bill be passed by a simple majority of the Assembly but not by a 2/3 majority, the effect of section 5 of the *Proportional Representation (Hare-Clark) Entrenchment Act 1994* and the *Referendum (Machinery Provisions) Act 1994* would be to require a referendum to be held concurrently with the next general election of the Assembly, due in October 2012.

If a referendum was held with the next general election, additional costs would be incurred in printing ballot papers, printing and posting "yes/no" cases to electors, conducting an information campaign, and additional scrutiny costs.

In making the recommendation that has led to the introduction of this Bill, the Commission considered that the scheme being proposed would be deserving of multi-party support. The issue being addressed by this Bill could affect any party with MLAs in the Assembly. As previous casual vacancies in the Assembly have demonstrated, it is relatively common for candidates who stood at the previous general election for the same party as the vacating Member to decline to contest casual vacancies, as their circumstances may have changed, or they may have left the ACT and not be eligible to contest the vacancy. As the number of unsuccessful candidates standing for a party that has succeeded in getting one or more of its candidates elected is sometimes relatively small –at times only 1-3 candidates – it can be assumed that at some stage in the future, an occasion will arise where there will not be an unsuccessful party candidate eligible to contest a vacancy for a vacating Member of the same party.

If this Bill does not proceed, it would be reasonable for parties to want to nominate more candidates than there are vacancies in an electorate, should those parties consider that they wanted to "take out insurance" that they would have sufficient unsuccessful candidates on the ballot to ensure that they would be able to fill any vacancies with one of their own candidates. The Commission notes that the Electoral Legislation Amendment Bill 2011 contains a clause that would limit the number of candidates that may be nominated for an election in an electorate by a party to no more than the number of members of the Legislative Assembly to be elected for the electorate. If the Electoral (Casual Vacancies) Amendment Bill 2011 does not proceed, the Assembly may wish to consider removing this amendment from the Electoral Legislation Amendment Bill 2011. The Assembly may also wish to introduce a complementary amendment to explicitly provide for the format of a ballot paper where a party's candidates are split between two columns because it has nominated more candidates than the number of vacancies.

However, the Commission considers that there is merit in restricting the number of candidates that may be nominated for an election in an electorate by a party to no more than the number of members of the Legislative Assembly to be elected for the electorate. As noted at page 28 of the Commission's report:

> The main reason why a party might want to nominate more candidates in an electorate than the number of vacancies would be where a party expected to win several seats in the electorate and the party wanted to ensure that it had a sufficient number of unelected candidates available to contest any subsequent casual vacancies ... . For example, if a party won 3 seats in a 5 member electorate, and the party had nominated 5 candidates, there would only be 2 unelected candidates available to contest any vacancies arising in relation to the 3 party members elected. If all 3 of those elected candidates resigned or died during the term of the Assembly, the party would only be able to win 2 of those 3 seats in the casual vacancy count-back, as there would only be 2 unelected party candidates available to contest the vacancy.
>
> If this scenario was considered likely, it can be conceded that a party might see a reason to nominate more candidates than the number of vacancies in an electorate. However, it would be unfortunate if a tactical decision dictated by the method of filling casual vacancies by count-back was to unduly complicate a general election in this manner. Rather than addressing this issue by nominating more candidates than the number of vacancies, it might be desirable to re-examine the casual vacancy process to determine whether there might be a better way of filling casual vacancies where a party vacancy occurs and a nominee from that party is not available to contest the vacancy.

The Commission also noted at page 27 of its report that parties should be cautious of nominating more candidates for election than there are vacancies in an electorate:

> The Electoral Act provides that, where a party nominates more candidates for an electorate than there are vacancies in the electorate, those candidates are to be split into 2 or more adjacent columns of equal length (so far as practicable), so that no column of candidates is longer than the number of vacancies.
>
> The main purpose behind this requirement is to limit the length of columns on ballot papers so as to minimise the number of Robson rotation variations that are needed to ensure fairness to all candidates. Currently the 5 member electorate ballot papers are printed 60 different ways and the 7 member electorate ballot papers are printed 420 different ways.

> At the time of drafting this requirement, it was not anticipated that parties were likely to nominate more candidates than vacancies. This view was taken on the basis that it can be argued that it would not be in a party's interests to nominate more candidates than vacancies: as the ballot paper instructions specify that voters should as a minimum show as many preferences as there are vacancies, a party that nominates more candidates than vacancies runs a significant risk that votes for that party will be lost through exhaustion of preferences, given that a very high proportion of voters only show as many preferences as there are vacancies.

For these reasons the Commission stands by its recommendations that have led to the introduction of the Electoral (Casual Vacancies) Amendment Bill 2011.

However, the Commission notes that the Opposition Leader, Mr Zed Seselja MLA, has indicated that he was concerned that this Bill would allow parties to "hand-pick" replacements for vacating MLAs (Canberra Times, 1 April 2011). Others have argued that by removing the possibility of a candidate from another party being appointed, the proposed amendment would remove a deterrent to early resignation of a seat.

The Commission accepts that, under the Bill, parties would be able to nominate a candidate to fill a casual vacancy in the relatively rare occurrence where there were no candidates from the vacating MLA's party who applied to contest a vacancy. The Commission considers that this is an appropriate outcome for the reasons set out above. However, if a situation were to occur where a party induces one or more otherwise eligible party candidates not to contest a casual vacancy in order to allow the party to appoint a person to fill the vacancy who was not a candidate at the election, it is arguable that this would constitute an offence under section 285 of the Electoral Act, which provides that it is an offence to offer an inducement to a person not to contest a casual vacancy. It is also an offence under section 288 of the Electoral Act to hinder the free exercise of a right under the Act by violence or intimidation. In these ways the Electoral Act would provide some protection against the abuse of the proposed provision.

The Commission notes that should one or other of the major parties oppose passage of the Electoral (Casual Vacancies) Amendment Bill 2011 the result could be passage by a simple majority but not a 2/3 majority. As a result of the operation of the Proportional Representation (Hare-Clark) Entrenchment Act and the Referendum (Machinery Provisions) Act, this would automatically refer the Bill to a referendum to be held at the next general election of the Assembly.

Accordingly, the Commission recommends as follows:

- The Commission **recommends** that the Assembly notes that, if the Electoral (Casual Vacancies) Amendment Bill 2011 is passed by a simple majority but not a 2/3 majority of MLAs, the operation of the Proportional Representation (Hare-Clark) Entrenchment Act and the Referendum (Machinery Provisions) Act would automatically refer the Bill to a referendum to be held at the next general election of the Assembly, with the inevitable associated costs for holding a referendum, including printing and counting ballot papers and printing and distributing information material.

- If the Electoral (Casual Vacancies) Amendment Bill 2011 appears to have the support of a simple but not a 2/3 majority of MLAs, the Commission **recommends** that the Assembly carefully consider whether it is prepared the Bill to a vote given that a referendum would be a statutorily inevitable consequence of passage with less than a 2/3 majority.

- If the Electoral (Casual Vacancies) Amendment Bill 2011 is not passed by the Assembly, the Commission **recommends** that the Assembly consider amending the Electoral Legislation Amendment Bill 2011 to remove the provision limiting each party to only being able to nominate up to the number of candidates to be elected in each electorate, and to introduce a complementary amendment to explicitly provide for the format of a ballot paper where a party's candidates are split between two columns because it has nominated more candidates than the number of vacancies.

Extending the right to cast a pre-poll vote to all electors

At pages 41-43 of its report on the 2008 election, the Commission discussed the marked trend in the increasing number of electors who have voted early at ACT elections and elections in other jurisdictions, including federal elections.

The Commission recommended at page 43 that the Assembly consider the arguments for and against amending the Electoral Act to provide that any elector may vote at a pre-poll voting centre, without the need to declare that they are unable to attend a polling place on polling day. This recommendation was not accepted by the ACT Government.

At present, all electors who vote at a pre-poll voting centre or who vote by post must declare that they are unable to attend a polling place or that they are electors with "silent" enrolment. The Commission's report noted that 20.3% of voters cast a pre-poll vote and 4.4% of voters cast a postal vote at the 2008 election.

In the light of this extensive take-up of early voting, the Commission noted at page 43:

> One consideration that might be explored is to wholly embrace the trend to early voting by removing the eligibility requirement for a pre-poll or postal vote by allowing any elector to have an early vote. This concept recognises that voting on polling day is effectively no longer the accepted practice for a significant proportion of the population, and that voting is now conducted over a polling period of several weeks. This concept recognises the convenience of service demanded by the electorate, and in any case may be occurring by default.

The Commission deliberately did not recommend that pre-poll voting should be extended to all electors. Rather, it suggested that the Assembly consider the arguments for and against providing that any elector may vote at a pre-poll voting centre, without the need to declare that they are unable to attend a polling place on polling day. While the Government has decided that it does not wish to include amendments along these lines in the current Electoral Legislation Amendment Bill 2011, the Commission considers that it would be appropriate for the Committee to have regard to this issue in its deliberations in this current inquiry.

Accordingly, the Commission recommends as follows:

- The Commission **recommends** that the Committee consider the arguments for and against amending the Electoral Act to provide that any elector may vote at a pre-poll voting centre, without the need to declare that they are unable to attend a polling place on polling day.

Authorisation of double-sided stickers containing electoral matter

At page 47 of its report on the 2008 election, the Commission discussed the issue of authorisation of double-sided stickers containing electoral matter.

The Commission noted that one incident that resulted in vigorous complaints to the Electoral Commissioner during the 2008 election related to a small sticker attached to *The Canberra Times* in the week leading up to polling day. The sticker was removable, with an authorisation statement on the reverse of the sticker. The Commissioner took the view that the sticker complied with the authorisation requirements. However, the circumstances raised the issue of whether the authorisation statement should be visible without having to first take some action, such as removing a sticker from another surface.

The Commission recommended that the Assembly consider amending the Electoral Act to address the issue of authorisation of double-sided stickers containing electoral matter. One option may be to require an authorisation statement on the facing side of the sticker, rather than the side stuck to the other surface. Another option may be to require an authorisation statement to appear on both sides of a sticker.

The Government did not support making an amendment along these lines. However, the Commission considers that it would be appropriate for the Committee to have regard to this issue in its deliberations in this current inquiry.

Accordingly, the Commission recommends as follows:

- The Commission **recommends** that the Committee consider amending the Electoral Act to address the issue of authorisation of double-sided stickers containing electoral matter.

Defamation of candidates

At pages 50-52 of its report on the 2008 election, the Commission discussed the offence of defamation of a candidate.

Section 300 of the Electoral Act provides for the offence of defamation of a candidate.

The Commission's report discussed the repeal of the equivalent offence in the Commonwealth Electoral Act in 2007. The report quoted extensively from material prepared by the Australian Electoral Commission that canvassed recent High Court cases that touched on the issue of defamation and concluded that it would be appropriate for the electoral offence to be repealed. In particular, the report noted that the Commonwealth experience in the High Court, as described in the AEC submission, would indicate that any attempt to prosecute section 300 in the ACT would be likely to fail on constitutional freedom of communication in political matters grounds.

Accordingly, the Commission recommended that the offence of defamation of a candidate in section 300 of the Electoral Act be repealed. The ACT Government did not accept this recommendation on the basis that an earlier attempt in 2008 to repeal section 300 was unsuccessful in the Assembly.

Nevertheless, the Commission considers that the arguments that led to the Commonwealth parliament repealing its equivalent defamation offence are compelling. Therefore the Commission considers that it would be appropriate for the Committee to have regard to this issue in its deliberations in this current inquiry.

Accordingly, the Commission recommends as follows:

- The Commission **recommends** that the Committee consider repealing the offence of defamation of a candidate in section 300 of the Electoral Act.

Increasing the penalty notice fine for failure to vote

At pages 67-69 of its report on the 2008 election, the Commission discussed the process of enforcing compulsory voting.

The Commission's report noted that the proportion of voters who failed to vote increased from 7.2% in 2004 to 9.6% in 2008. The report also noted that the number of electors who paid the $20 failure to vote fine increased from 1,953 in 2004 to 3,422 in 2008.

The report noted at page 69:

> It is possible that the marked increase in the number of non-voters choosing to pay the $20 penalty for failing to vote may be due at least in part to the low value of the penalty. For some electors, it may be that the $20 penalty is not a sufficient incentive to encourage them to vote. It is noteworthy that only the ACT, Western Australia and the Commonwealth currently have a $20 penalty. For federal elections, the $20 penalty has remained unchanged since the electoral reforms of 1984. The penalty notice fines in other jurisdictions range from $24 in Tasmania to $50 in Queensland and $54 in Victoria. The Western Australia penalty also increases to $50 if the elector fails to reply to the first notice and is sent a second notice. The penalty in New South Wales and the Northern Territory is $25 and in South Australia the penalty is $30.

Accordingly, the Commission recommended that the penalty notice fine for failing to vote at ACT Legislative Assembly elections should be increased. The ACT Government did not accept this recommendation.

The Commission remains concerned that the reduction in turnout at the 2008 election may in part have been the result of the low level of the failure to vote penalty. Therefore the Commission considers that it would be appropriate for the Committee to have regard to this issue in its deliberations in this current inquiry.

Rather than increasing the base fine, another option that the Assembly may wish to consider could be the Western Australian model, where the penalty set out in the first notice is $20, and the penalty set out in the second notice increases to $50 if the elector fails to reply to the first notice.

Accordingly, the Commission recommends as follows:

- The Commission **recommends** that the Committee consider whether the penalty notice fine for failing to vote at ACT Legislative Assembly elections should be increased.

Electoral enrolment

Victoria and New South Wales have recently introduced schemes for "automatic enrolment" of various classes of electors, and election-day enrolment for people who are not on the electoral roll. These schemes applied in the lead up to the recent Victorian and NSW elections. The Queensland State government is also considering introducing new procedures along these lines.

These changes have been adopted by these jurisdictions to address the growing number of eligible citizens who have not taken action to correctly enrol on the Australian electoral roll. The Australian Electoral Commission estimated that around 1.4 million eligible citizens were not enrolled nationwide at the time of the 2010 federal election.

Automatic enrolment is a way of securing new electoral enrolments and updated electoral enrolments from citizens without requiring them to actively complete an electoral enrolment form, as is currently required for Commonwealth and ACT enrolments.

Under the Victorian automatic enrolment scheme, a relatively limited trial undertaken in the lead-up to the November 2010 State election, names of students were sourced from the Victorian Curriculum and Assessment Authority. These names were then checked against existing electoral records and verified using birth registers. If a person was identified who was not currently enrolled, or was not enrolled for a current address, and who was also apparently entitled to enrol as they were born in Victoria, the Victorian Electoral Commission sent them a letter. The letter stated that the person would be automatically entered on the electoral roll, unless the person contacted the Commission with a valid reason as to why they should not be automatically enrolled. If no reply was received from the person, that person was automatically entered on the electoral roll. A confirmation letter was sent to the person's enrolled address, giving a final opportunity to object to or correct the proposed enrolment.

Victoria enrolled 1,854 electors using this method prior to the election. Of these electors, around 40% of them did not vote.

Under the NSW automatic enrolment scheme, used in the lead-up to the March 2011 State election, names were sourced from the Board of Studies, the First Home Owners Grant scheme and from the Road Transport Authority. These names were then checked against existing electoral records and verified using birth registers and citizenship records. If a person was identified who was not currently enrolled, or was not enrolled for a current address, and who was also apparently entitled to enrol as they were an Australian citizen, the NSW Electoral Commission sent them an SMS text message, an email or a letter. The message stated that the person would be automatically entered on the electoral roll, unless the person contacted the Commission with a valid reason as to why they should not be automatically enrolled. If no reply was received from the person, that person was automatically entered on the electoral roll. A confirmation letter was also sent to the person's enrolled address.

NSW enrolled around 44,400 electors using this method. An analysis of the impact of the adoption of these changes has not yet been published, in particular, whether those who were automatically enrolled were disproportionally included in those who failed to vote.

Victoria and NSW also introduced schemes for enrolling people on polling day, where their names do not appear on the electoral roll at all. In this case, the voters are required to produce proof of identity, such as a drivers licence or proof of age card. These voters cast declaration votes which must then be verified before the votes are admitted to the count and their details are added to the electoral roll. These schemes applied at the recent Victorian and NSW elections. Around 34,500 election-day enrolment applications were received at the Victorian election, of which around 29,300 votes were admitted to the count. Numbers of voters who used this facility at the NSW election have not yet been reported by the NSW Electoral Commission.

Both of these new methods of enrolment are significant departures from long-standing electoral practice. As such, they carry significant risks. Automatic enrolment carries the risk that persons may be enrolled who are not eligible to enrol, and the risk that people may be enrolled for an incorrect address. It also introduces the risk that a person may be enrolled without their knowledge, if they do not receive any of the communications sent by the Electoral Commission. The 60% participation rate of the Victorian trial indicates that the automatic enrolment may be considerably less effective at securing turnout compared to active enrolment.

Enrolment on election day overturns the long-standing policy that electoral enrolment should be concluded before voting starts in an election in order to allow sufficient time to verify that an enrolment is not fraudulent. It also overturns the principle that parties and candidates should have the opportunity to object to someone's right to enrol before the voting period starts. While modern methods of identification might justify overturning these policies and principles, it is arguable that these issues should be properly considered before this change is adopted in the ACT.

A significant outcome of the introduction of automatic enrolment and election-day enrolment in NSW and Victoria is that the electoral rolls in these jurisdictions are now significantly out of step with the Commonwealth roll, and are likely to become increasingly out of step with it for so long as the Commonwealth requires a signed electoral enrolment form for new enrolments. While every elector who is automatically enrolled in these jurisdictions is sent a Commonwealth enrolment form, comparatively few electors complete and return these forms. This means that some electors are on the State rolls but are not on the Commonwealth rolls at all, and that some electors are on the State rolls for a recent address and on the Commonwealth rolls for an out-of-date address. It is possible that by the time of the next federal election the number of electors who are on the NSW roll but not on the Commonwealth roll for the same address could grow to at least 400,000.

The Commonwealth Government has not made any commitment to introducing automatic enrolment or election-day enrolment. The Commonwealth Parliament's Joint Standing Committee on Electoral Matters recommended that automatic enrolment should be adopted before the last federal election. Another inquiry by this Committee is currently underway. The Australian Electoral Commission has recommended in a submission to this Committee that automatic enrolment and election-day enrolment should be adopted for federal elections. However, there is no indication that the current Commonwealth Government will implement these recommendations.

The ACT Electoral Commission's advice on enrolment matters has generally been that the ACT should remain in step with the Commonwealth, in order to benefit from the Australian Electoral Commission maintaining the complete ACT roll under the joint roll arrangement, and in order to provide a comprehensive service to electors, avoiding the confusion that would arise if the ACT was to have enrolment procedures that were different from the Commonwealth's. At this stage, the Commission continues to recommend that the ACT should remain in step with the Commonwealth.

However, the significant moves made by NSW and Victoria, and the possibility that other States may follow, suggests that the ACT should actively consider its position. The Commission considers that it would be appropriate for this matter to be considered by this Committee in the context of this current inquiry.

Adoption of the proposed changes in the ACT, without complementary changes being made at the Commonwealth level, would carry significant costs. The schemes adopted in NSW and Victoria have entailed very significant costs in terms of computer programming, communication costs, project management and staff time. If the ACT was to manage similar changes in-house, the Commission would need to secure significant increases in budget funding and staffing levels. Another option might be to contract another State, such as NSW, to manage automatic enrolment on the ACT's behalf. However, significant additional costs would still be expected – noting that the ACT would need to maintain its payments to the Commonwealth for the joint roll, as NSW and Victoria still do.

A relevant consideration is to examine the benefit that automatic enrolment and election-day enrolment would bring to the ACT. The ACT remains the Australian jurisdiction with the highest proportion of eligible people on the electoral roll. The ACT consistently records enrolment participation rates of around 95%-96%, compared to NSW (91%) and Victoria (92%). As at the time of the federal election, this equated to an estimate of around 11,700 eligible citizens who were not on the ACT electoral roll – some of whom would be overseas. It is arguable that this relatively small number of non-enrolments is not a sufficient problem to justify substantially increased costs and elector confusion.

Taking all these considerations into account, the Commission recommends as follows:

- The Commission **recommends** that the Committee consider whether it would be appropriate for the ACT to implement automatic enrolment and/or election day enrolment, noting that the Commission's preferred enrolment model is to remain in step with the Commonwealth enrolment scheme.

- The Commission **recommends** that the Committee consider whether it would be appropriate for the ACT Government or Assembly to approach the Commonwealth to encourage it to adopt a national automatic enrolment scheme.

Party registration

At pages 22-25 of its report on the 2008 election, the Commission discussed issues related to the registration of political parties.

The report noted that after every election, the Commissioner routinely writes to all registered political parties seeking assurance in writing that they currently had at least 100 members whose names were on the ACT electoral roll. The Electoral Act provides that the Commissioner must cancel the registration of a party where the Commissioner believes on reasonable grounds that the party did not have at least 100 members who were electors in the ACT.

Section 97A of the Electoral Act (Information about political parties) provides that:

> (1) The commissioner may, by written notice given to the registered officer of a registered party, require the officer to give the commissioner information stated in the notice that is reasonably necessary for the commissioner to find out whether the party is entitled to be registered.
>
> (2) Without limiting subsection (1), the commissioner may, under that subsection, require the registered officer to give the commissioner a list, as at a stated date, of the names and addresses of at least 100 members of the party who are electors.
>
> (3) The commissioner may use the information obtained under subsection (2) only to find out whether the party is entitled to be registered.

In accordance with section 97A, on 18 April 2011 the Electoral Commissioner wrote to all registered ACT political parties and requested that each party provide the Commissioner with a list of the names and addresses of at least 100 members of the party who are on the ACT electoral roll. This list was to be provided by no later than 30 September 2011. The result of this review of the membership status of the registered parties will be published by the Commissioner after this date.

An article in the *Canberra Times* of 16 June 2011 referred to this review of party membership in the context of a report on the number of members each of the parties represented in the Legislative Assembly had. An editorial published by the *Canberra Times* that day asserted that the Electoral Commissioner had refused to make public the number of members that each of these parties had. For the record, this is not the case. The Commissioner has no power to ask for the total number of members that any registered ACT party has on its books. The only relevant power the Commissioner has in this regard is the power set out above in section 97A of the Electoral Act, to seek information that will satisfy the Commissioner that a party has at least 100 eligible members.

Typically, parties meet this requirement by providing the Commissioner with a list of just over 100 members. This is sufficient to satisfy the requirements of section 97A. Once the Commissioner has concluded any checking of these membership lists, the Commissioner destroys the lists in order to preserve the privacy of persons included on those lists. This action is sanctioned by the *Territory Records (Records Disposal Schedule – Electoral Records) Approval 2004 (No 1)*.

Electoral funding and financial disclosure issues

The Commission's report canvassed two issues that were then current, including the proposal in the Parliamentary Agreement between the ACT Government and the ACT Greens to require all political donations to be disclosed within 1 month of receipt and, in an election period, on a weekly basis; and the Commonwealth Electoral Reform Green Paper on Donations, Funding and Expenditure.

At recommendation 13, the Commission recommended that these two issues be considered, perhaps by a Legislative Assembly parliamentary committee, once the outcome of the Commonwealth review is known. As discussed above, the Commonwealth has yet to announce the result of its green paper review process on donations, funding and expenditure.

Subsequent to the Commission's report, on 19 November 2009 the Legislative Assembly referred the matter of campaign finance reform to the Standing Committee on Justice and Community Safety for inquiry and report. The Commission submitted a substantial submission to this inquiry on 3 March 2010. The Committee has yet to issue its report on this inquiry.

More recently, substantial funding, disclosure and expenditure reforms have been implemented in New South Wales and foreshadowed in Queensland.

The Commission does not propose to include further information on this issue in this present submission. However, the Commission would be happy to provide further information if requested by the Committee.

Redistribution of electoral boundaries

A redistribution of the ACT Legislative Assembly electoral boundaries occurs after every general election. A redistribution process commenced in January 2011 and was still underway at the time of writing this submission.

Section 39 of the Electoral Act states that a Redistribution Committee shall consist of the Electoral Commissioner, the ACT Planning and Land Authority, the ACT Surveyor-General, and a person appointed by the Electoral Commission whose qualifications or experience would, in the opinion of the Commission, enable the person to assist the committee. Under section 47 of the Electoral Act, these 4 officers combine with the other members of the Commission to form the Augmented Electoral Commission.

At present, the statutory position of the ACT Planning and Land Authority is currently held by Mr Neil Savery, the Chief Planning Executive. It is understood by the Commission that, following the changes made to the ACT public service structure, some time after 1 July 2011 the statutory position of the ACT Planning and Land Authority will be held by the Director-General of the Environment and Sustainable Development Directorate.

No amendments to the Electoral Act are required to facilitate this change in the membership of the Redistribution Committee and/or the Augmented Electoral Commission, as the statutory title of Planning and Land Authority will remain unchanged.

In 2007, the Electoral Act was amended to provide that the Surveyor-General (titled at that time the Chief Surveyor) is not subject to direction from anyone (other than the Electoral Commissioner, for the efficient functioning of the Redistribution Committee and the Augmented Electoral Commission) in the exercise of the Surveyor-General's functions as a member of the Redistribution Committee and the Augmented Electoral Commission. This change was made to put beyond doubt the independent statutory nature of the members of the Redistribution Committee and the Augmented Electoral Commission, so as to ensure that there was no question that the Surveyor-General was subject to any direction in relation to redistribution matters by virtue of being an officer in a Government agency.

Given that the Director-General of the Environment and Sustainable Development Directorate is ordinarily subject to Ministerial direction in the normal course of duties, it would be appropriate for a similar amendment to be made in relation to that officer's participation in the redistribution process.

In examining the relevant provisions, the Commission notes that section 47 of the Electoral Act, which relates to the establishment of the Augmented Electoral Commission, currently states that the Surveyor-General is not subject to direction from anyone (other than the Electoral Commissioner, for the efficient functioning of the Augmented Electoral Commission). Given that the Augmented Electoral Commission is chaired by the Chairperson of the Commission, the Commission suggests that it would be appropriate to amend section 47 to refer to the Commission Chairperson, rather than to the Electoral Commissioner, as the officer entitled to give directions for the efficient functioning of the Augmented Electoral Commission.

Accordingly, the Commission recommends as follows:

- The Commission **recommends** that section 39 of the Electoral Act be amended to provide that the Planning and Land Authority is not subject to direction from anyone (other than the Electoral Commissioner, for the efficient functioning of the Redistribution Committee) in the exercise of the Planning and Land Authority's functions as a member of the Redistribution Committee.

- The Commission **recommends** that section 47 of the Electoral Act be amended to provide that the Planning and Land Authority is not subject to direction from anyone (other than the Commission Chairperson, for the efficient functioning of the Augmented Electoral Commission) in the exercise of the Planning and Land Authority's functions as a member of the Augmented Electoral Commission.

- The Commission **recommends** that section 47 of the Electoral Act be amended to replace the reference to the Electoral Commissioner with a reference to the Commission Chairperson in relation to the existing provision that the Surveyor-General is not subject to direction in the exercise of the Surveyor-General's functions as a member of the Augmented Electoral Commission.

The size of the Legislative Assembly and the number of members to be elected in each electorate

At pages 79-80 of its report on the 2008 election, the Commission discussed issues related to the size of the Legislative Assembly and the number of members to be elected in each electorate.

The Commission recommended (at recommendation 16) that, if the size of the Assembly is to be changed prior to the 2012 election, all necessary legislative changes should be made by October 2010. In the conduct of its 2011 redistribution processes the Commission has once again received suggestions in public submissions and hearings that increasing the size of the Assembly could lead to both better representation, and a reduction in the extent to which neighbourhoods are split between electorates. Those in the Woden Valley and in Gungahlin whose neighbourhoods are split between electorates believe that this leads to a lack of political representation and priority. The view was put to the Commission that it would be desirable if there could be clear "northern", "central" and "southern" electorates (or groupings of electorates).

The Commission notes that, at the time of writing, it would appear that there was no likelihood that any change to the size of the Legislative Assembly or to the number of members to be elected in each electorate would be made prior to the 2012 election, even though a 2002 Assembly inquiry supported increasing the size of the Assembly.

One reason why no change has been progressed in this area may be that no single option has emerged that has general support of the various parties represented in the Assembly.

In its June 2002 report regarding its Inquiry into the appropriateness of the size of the Legislative Assembly for the ACT and options for changing the number of members, electorates and any other related matter, a majority of the Standing Committee on Legal Affairs recommended that the Assembly should be increased to 21 members based on 3 electorates of 7 members each. Another option that has attracted support is the proposal that the Assembly should be increased to 25 members based on 5 electorates of 5 members each.

Both of these options would satisfy the guiding key principles identified by the Commission in its submission to that inquiry. These principles are aimed at preserving the integrity of the ACT's Hare-Clark electoral system by ensuring fairness and equity. The principles identified by the Commission were:

- Each electorate should have at least 5 Members;
- Each electorate should have an odd number of Members;
- Electorates should each return the same number of Members; and
- The total number of Members should be an odd number and accordingly there should be an odd number of electorates.

The Commission notes that a similar impasse occurred in the history of elections in the ACT when the various parties in the Commonwealth parliament could not agree on an electoral system for the ACT. To break that impasse, a referendum was held in conjunction with the 1992 election, giving voters of the ACT the opportunity to choose which electoral system they preferred. This is an option that the Assembly could consider for deciding the future size of the Assembly. Should the Assembly be of such a mind, a referendum could be held concurrent with the 2012 election, seeking the views of voters as to their preferred size of the Assembly.

As noted above, however, in relation to the casual vacancy recommendations, any referendum involves a level of additional costs for printing ballot papers, printing and posting to electors cases for and against the various options, conducting an information campaign, and additional scrutiny costs.

Accordingly, the Commission recommends as follows:

- The Commission **recommends** the Committee note the precedent of the use of an indicative referendum as a means of resolving an impasse in relation to the electoral system in 1992, and that the Committee consider conducting an indicative referendum in concert with the 2012 election seeking the views of electors as to their preferred size of the Assembly, noting that to do so would require that the Commission be provided with additional resources to cover the costs of holding a referendum, including printing and counting ballot papers and printing and distributing information material.

Statutory independence

At page 82 of its report on the 2008 election, the Commission discussed the issue of the statutory independence of the Commission.

In its report, the Commission noted that, on 27 May 2009 the Commission made a submission to the Standing Committee on Administration and Procedure in relation to its Inquiry into the appropriate mechanisms to coordinate and evaluate the implementation of the Latimer House Principles in the governance of the ACT. The submission can be found at: www.elections.act.gov.au/page/view/481/title/submissions-to-act-legislative-assembly.

That submission discusses the importance of independence to electoral commissions and examines the strengths and weaknesses of the ACT Electoral Commission's statutory independence. Those arguments are not repeated here; the reader's attention is drawn to the submission.

The Commission made the following suggested changes to legislation in its submission:

- That the Electoral Act be amended to provide that the Commission and the Commissioner are not subject to the direction or control of the Executive in respect of the performance or exercise of their functions or powers other than as explicitly provided in relevant legislation;

- That the Electoral Act be amended to explicitly provide that the Electoral Commissioner has all the powers of a chief executive under the Public Sector Management Act in relation to the staff employed to assist the Commissioner; and

- That relevant legislation be amended to facilitate allocation of funds directly to the office of the Electoral Commissioner and to give direct responsibility to the Commissioner for monies spent by the Commissioner.

None of these suggested changes have since been taken up by the Assembly or by the Government.

Two events have occurred since that inquiry that could have a bearing on the above suggested changes.

In the review conducted by Allan Hawke, *Governing the City State: One ACT Government – One ACT Public Service*, published in February 2001 (the Hawke review), the report stated at pages 102-103:

> It is in the number and role of statutory office holders that the propensity for the ACT Government and ACTPS to adopt models in place in state governments without necessarily analysing the need for, and intended role of, such offices is perhaps most evident. There are clear examples of offices which must exist because their roles at arm's length from the government are part of the foundation of the ACT's system of government and accountability frameworks. Offices in this grouping would include the Auditor-General, the Director of Public Prosecutions, the Human Rights Commission, and the Electoral Commissioner.

> In keeping with their independence, these offices should receive appropriation funding in their own right. While the level of resourcing for those officers is properly a matter for the Government to determine in setting the Budget, it is appropriate that funding for independent office holders be appropriated directly to their offices.

Accordingly, the Hawke review made the following recommendations at page 9 in relation to statutory offices:

> 25. Apply the Public Interest Map to the need for, and role of, statutory office holders.
>
> 26. The proposed Chief Minister's Department adopt a standard model for the appointment and terms and conditions for fulltime and part-time statutory office holders.
>
> 27. Unless there is a clear reason not to, vest statutory decision making powers in public servants.
>
> 28. Review the arrangements of ACTPS part-time statutory office holders.
>
> 29. Subject to the Review proposed at Chapter 3, statutory office holders should receive appropriation funding in their own right.

The Commission understands that the review of the arrangements applying to statutory office holders set out in the above recommendations has not yet commenced. The Commission supports such a review and reiterates its view that the Electoral Act and other appropriate legislation should be amended to strengthen the independence of the Commission along the lines suggested above.

The second development has been the inquiry announced by the Assembly Standing Committee on Administration and Procedure into the feasibility of establishing the position of Officer of the Parliament as it might related to the Auditor-General, the Ombudsman, the Electoral Commissioner and other statutory office holders. The Commission has been invited to submit a submission to this inquiry by 29 July 2011. The Commission intends to make a submission to this inquiry along the lines expressed above and in its submission to the Latimer House Principles inquiry. It is possible that this inquiry may cut across some of the ground envisaged to be covered by the propose Hawke review into statutory office holders.

Election information and communication technology systems

The ACT Electoral Commission has been very successful in implementing innovative and best practice information and communication technology (ICT) systems for managing and conducting Legislative Assembly elections in the ACT. However, the election critical systems used for the 2008 ACT election require redevelopment to make them operational for the 2012 election and beyond.

Capital funding of $1,373,000 for updating and redeveloping these systems in preparation for the 2012 ACT election was provided in the 2009/2010 budget for a 4-year program leading up to and past the 2012 election. Work on these systems commenced in 2009. As at the end of May 2011, around $430,000 had been spent.

Given the interest that has been shown in the Commission's ICT systems in previous Assembly Committee hearings, this section of this submission provides details of the Commission's systems and sets outs the work that has been completed to date and the work still to be done in order to upgrade the critical election ICT systems for the 2012 election.

The election ICT business systems that are being updated or developed include:

- Electronic voting and counting system (eVACS®);
- Election results display system (ERDS), which includes the election night results;
- Election management systems;
- Electronic Legislative Assembly Polling Place System (eLAPPS), incorporating the electronic certified list of electors and electronic polling place returns;
- Scanning of handwritten ballot papers; and
- On-line ballot system (netVote).

Electronic voting and counting system (eVACS®)

It is a statutory requirement for the ACT Electoral Commissioner to provide electronic voting at ACT elections (section 118A of the Electoral Act).

Electronic voting provides significant benefits to the community and to the political process. Advantages include:

- Electronic voting significantly reduces the number of unintentional voter errors compared to handwritten ballot papers and has contributed to an overall drop in the proportion of informal voters at elections where it has been used;
- Electronic voting allows blind and sight-impaired people to vote without assistance and in secret through use of headphones and recorded voice instructions;
- Electronic voting provides on-screen voting instructions in 12 different languages; and
- Electronic voting eliminates the need for manual counting of electronic votes, thereby removing the possibility of counting error and speeding the transmission and finalisation of election results.

Combining electronic voting with electronic counting also has significant benefits. Capturing handwritten preferences shown on paper ballots by data-entry (in 2001 and 2004) and scanning (in 2008) has proved to be faster and more accurate than hand counting. Once all electronic votes and handwritten preferences have been captured in computerised form, a counting program can then be used to distribute these preferences in accordance with the ACT's Hare-Clark electoral system to deliver an accurate election result. This process has resulted in ACT election results being finalised in record time, with the 2008 result finalised on the Saturday 7 days after polling day, the day after the last day for receipt of postal votes.

The demonstrable accuracy achieved by the computer counting system means that it is unlikely that an ACT election will in future be delayed by the need to conduct exhaustive manual recounts, as occurred in 1998, when the election took around 3 weeks to finalise after a recount was held in the Molonglo electorate.

A very significant advantage of computerised counting of the ACT's Hare-Clark system is that casual vacancy counts, which involve a "countback" of ballot papers counted at the preceding general election, can be conducted using the computerised counting system. Using the eVACS® system, the count to fill the vacancy following the resignation of Mr Jon Stanhope in 2011 took less than 15 minutes, including the formal declaration of the contesting candidates. By contrast, the manual countback to fill the vacancy following the resignation of Mrs Kate Carnell in 2001 took around 2 days to complete.

eVACS® is a system developed by a Canberra company, Software Improvements, in the lead-up to the 2001 election. eVACS® was used at the 2001, 2004 and 2008 elections, with some upgrades carried out by Software Improvements between each election.

eVACS® is essentially comprised of 2 modules: an electronic voting component, which permits voters to cast their vote directly onto a computer system; and an electronic counting component, which combines electronic votes with votes captured from hand-written ballot papers using data-entry and/or scanning, and distributes preferences using the ACT's Hare-Clark system to determine election outcomes.

The ACT's electronic voting system is the first of its kind to be used for parliamentary elections in Australia. While other Australian jurisdictions have, since 2001, introduced electronic voting for limited classes of voters –such as people with vision impairment and internet voting for people in remote locations – the ACT remains the only Australian jurisdiction that permits all voters at an electronic voting-equipped polling place to use electronic voting.

At the 2008 election, over 43,500 voters used this system, or about 20% of all voters. In 2004, just over 28,000 voters used electronic voting. Over 16,500 voters used electronic voting in 2001.

At the 2001 and 2004 elections, electronic voting was provided at all 4 pre-poll voting centres in the weeks leading up to polling day, with electronic voting provided at 8 polling places on polling day itself, with the 4 pre-poll voting centres in the main town centres used as ordinary polling places on polling day and an additional 4 polling places equipped with electronic voting for polling day only.

The electronic voting system was used at the 2008 election in 5 locations in Canberra's main town centres, which were used as pre-poll voting centres and as ordinary polling places on polling day. Extending electronic voting to additional ordinary polling places on polling day was discontinued in 2008 as it was considered that the additional effort involved in setting up electronic voting just for one day was not considered worth the benefit gained.

The eVACS® system uses standard personal computers as voting terminals, with voters using a barcode to authenticate their votes. Voting terminals are linked to a server in each polling location using a secure local area network. No votes are taken or transmitted over the internet or any other public network. Backups and security features are designed to ensure that there is very low risk that votes will be lost or data corrupted.

In polling places that do not have electronic voting, voters still use traditional paper ballots. In electronic polling places, voters are given a choice of voting electronically or on paper.

The Commission has been able to implement electronic voting in a cost-effective manner by making use of hired computer equipment, or equipment coming on or off lease for other ACT agencies through InTACT. This has been possible as eVACS® is designed to run on standard computer equipment. For the 2012 election, consideration is being given to using hardware supplied either by InTACT or by other Australian electoral commissions. eVACS® also uses some non-standard hardware, including numeric keyboards and barcode readers. These items have been purchased by the Electoral Commission and re-used at successive elections.

Electronic counting, which combines the counting of electronic votes and paper ballots, was first used in the ACT at the 2001 election and was again used in the 2004 and 2008 elections. In 2001 and 2004, preferences shown on paper ballots were data-entered by two independent operators, electronically checked for errors, and manually corrected if required. In 2008, an intelligent character recognition scanning system was used to capture preferences on paper ballots, with intensive manual checks used to ensure a very high level of accuracy (described further below). This data was then combined with the results of the electronic voting, and the computer program distributed preferences under the ACT's Hare-Clark electoral system.

The software for the electronic voting and counting system was built using Linux open source software, which was chosen specifically for this electoral system to ensure that the election software is open and transparent and could be made available to scrutineers, candidates and other participants in the electoral process. The provision of the open source code on the Elections ACT website has allowed external software experts to review the code and, in some cases, find minor errors which Elections ACT has had corrected. This process is intended to increase public confidence in the system.

For security purposes, eVACS® is not connected to any network outside its own local area. It is not connected to the ACTGOV network. User access is limited and physical controls are used – for example, the polling place servers are housed in locked cabinets throughout polling. All data is backed up, with dual hard disks used in voting servers to store votes as they are cast and all data copied to multiple CD-ROMs at the end of each day's polling. All changes to eVACS® are also subject to an independent code audit that examines whether the code is fit for purpose and ensures that the code could not be used to fraudulently alter the voting or counting process.

In 2008, eVACS® operated successfully and efficiently, as indicated by the high number of electronic votes taken at the 5 polling locations – over 43,500. However, some issues arose that indicate that the system needs upgrading before it can be used for the next ACT election, due in October 2012.

The most pressing need identified is to upgrade eVACS® so that it runs on modern hardware. The version of eVACS® used for the 2008 election required IDE hard drives. These hard drives have now been superseded by SCSI hard drives and are not able to be purchased in modern standard computer equipment. In order to address this issue, eVACS® needs to be updated with a more up-to-date operating system and upgraded to ensure that it can run on the hardware likely to be used for the 2012 election.

Another issue that arose was that, when the computer screens went into "sleep mode" to save power, voters presented with blank screens may have inadvertently cast informal or otherwise unintended votes. To address this, it is proposed to turn the "sleep mode" functionality off while polling is underway. These screens will be turned off when polling is not underway.

Another change is being made to improve the usability for eVACS® for blind and vision impaired voters. Currently eVACS® uses a cut down numeric keypad similar in configuration to those found on the right hand side of most normal desk top keyboards. However, bodies representing blind and vision impaired persons have indicated that many blind and vision impaired voters would prefer to use telephone style keypads, which have a different key configuration to the current keypads. A change is being made to allow telephone style keypads for those terminals designated for use by blind and vision impaired voters (there is one such terminal per polling place), while using the current keypads on all other terminals.

A number of other more minor issues are also being addressed as part of the upgrade of eVACS®.

A contract has been let with Software Improvements for the upgrade of eVACS®. Work has commenced on this upgrade and the upgraded system is on track to be delivered towards the end of 2011.

Implementing these relatively minor changes to eVACS® is intended to ensure that eVACS® will be robust and suitable for use at the 2012 election, using an up-to-date operating system with modern hardware.

Election results display system (ERDS)

The election results display system (ERDS) is the computer system that takes the count of first preferences reported by polling places and scrutiny centres using the Electronic Legislative Assembly Polling Place System (eLAPPS), and displays the results in a variety of tables on the internet and in the ACT tally room on election night. A large data projector is used in the tally room to display the progressive results using screens generated by ERDS for public viewing.

ERDS also generates a data feed for use by the media – principally the ABC's election night coverage on television, radio and the internet.

Sometimes erroneously referred to as the "election night" system, ERDS is used to display both the election night results and updated results in the week or so following polling day. Once the election results are finalised, ERDS generates static web pages which remain on the Elections ACT website, and the results used by ERDS are published in the official ACT Election Statistics book. ERDS is essentially a record and display system.

ERDS gathers election results from around 80 polling places and other counting teams, such as the postal vote count, the mobile poll count and interstate votes. ERDS takes this data and turns it into around 300 web pages, containing the raw data as well as percentages, totals, aggregated data and Hare-Clark quotas. It is not a relatively complex system.

However, it seems a universal election night tradition that systems such as this one experience difficulty on election night. This can be a factor of the unavoidable last minute setup of the tally room, the temporary nature of the tally room's ICT infrastructure, or finalisation of the details of the election not being known until well into the election process. Past ACT election nights have tended to involve some outages during the night as system problems surface and are then resolved. In 2008, the election results database unexpectedly ceased updating for around 45 minutes from around 9.00 pm. During this time, the display of results on the tally room projector screen was not shown. However, the internet results pages and the information available on the ABC results system remained available, albeit not updated during this outage. The problem was rectified and data entry recommenced around 9.45 pm.

The ERDS system used in 2008 was written for Elections ACT by a private contractor. While the system worked correctly except for the unexpected outage, investigation of the outage did not definitively find an explanation for the cause of the outage.

Rather than risk repeating a similar outage in 2012, Elections ACT has decided to let a contract for the complete redevelopment of ERDS. This redevelopment will provide the opportunity to use the latest best-practice methods and modern graphical techniques in the election result displays.

An important aspect of ERDS implementation is the hosting arrangements of the data servers and the web servers. Elections ACT is in discussion with the Australian Electoral Commission regarding the possibility of using its data and web servers for the ACT's ERDS. These servers are used by the AEC for its Virtual Tally Room system used for federal elections. Use of the AEC servers would provide the ACT with a very secure and reliable platform specifically designed for the specialised requirements of an election results display system.

Note that ERDS is independent of eVACS® and not connected to it. Data that is output from eVACS® is manually input into ERDS.

As at June 2011, Elections ACT had sought quotes from potential contractors for development of ERDS. It is expected that development of ERDS will be complete in the first quarter of 2012.

Election management systems

Elections ACT has developed a suite of small databases that are used to facilitate election management. These databases have mostly been built and maintained in-house. They include systems to assist in the conduct of Legislative Assembly elections and fee-for-service elections, and ancillary electoral functions such as funding and disclosure, party registration, electoral enrolment, redistribution of boundaries and electoral education. Together, this collection of databases is known as TIGER (The Integrated Gathering of Electoral Records).

TIGER includes the following modules:

- Candidate nominations
- Voting estimates
- Polling place information
- Polling place staffing
- Polling place training
- Polling forms and materials
- Electoral roll
- MLAs electoral roll
- Postal voting
- Non-voters and multiple voters
- Funding and disclosure
- Party registration
- Redistribution of boundaries
- Election statistics
- Education and information
- Records management
- Non-parliamentary fee-for-service elections

The databases are divided into two types: the roll management and postal voting systems are SQL databases, and the remainder are Microsoft Access databases. The SQL databases were redeveloped from Access databases following the 2004 election, at which time it was considered they were at risk of failure if they remained in that format. All of these databases performed satisfactorily during and after the 2008 election.

As these systems are aging, and as most of them were developed using versions of Microsoft Access that are now superseded, Elections ACT intends to conduct an upgrade of the full suite to update functionality and operability. As at June 2011, work has commenced on converting the Access databases to the currently supported version of Access. Following this conversion, the systems will be tested and some minor improvements will be implemented. It is expected that this upgrade work will be completed by the end of 2011.

The redevelopment should enable the continued hosting of the systems within the ACTGOV network.

Electronic Legislative Assembly Polling Place System (eLAPPS)

At the 2008 election, Elections ACT implemented an electronic certified list of electors using Personal Digital Assistants (PDAs) borrowed from the Queensland Electoral Commission. Using this system, electors voting at polling places had their names found and marked on the electoral roll electronically. This system replaced paper certified lists, which were used at past elections and combined with electronic scanning of the printed certified lists to compile lists of voters, multiple voters and non-voters.

While similar systems had been used at some other Australian elections on a smaller scale, the ACT's use of PDAs in 2008 was the first occasion on which an entire jurisdiction used electronic rolls for all issuing officers at all polling place locations across the jurisdiction.

The development of the electronic certified list of electors used in 2008 was funded through savings achieved by not having to print and scan the paper certified lists. The system worked exceptionally well for the 2008 election, but there were a number of minor aspects that did not operate effectively in all cases, such as the uploading of data to the central unit in each polling place and statistical information. While the PDAs performed effectively in 2008, they are now effectively obsolete. The opportunity has arisen to borrow netbooks (small laptop computers) from the Tasmanian Electoral Commission for the 2012 election. The additional functionality provided by these netbooks allows this system to be extended in scope to include wireless back-to-base reporting and ACT-wide replication of names marked off the electoral rolls, to reduce opportunities for fraudulent voting.

The netbooks can also be used to add features for use by the officers in charge of polling places to automate various tasks, including the transmission of the votes counted to candidates to the election results display system used in the tally room and on the internet.

In February 2011 a contract was let with a Canberra company, F1 Solutions, for the development of the eLAPPS system. It is expected that this system will be developed and tested by the end of 2011.

Scanning of ballot papers

A system to scan ballot papers was introduced for the 2008 election, funded through savings achieved by moving away from manual data-entry of paper ballots. This scanning system used intelligent character recognition (ICR) scanning, combined with intensive human verification, to electronically capture all hand-written preferences on all formal ballot papers. The system proved highly accurate and successful, with the result that the election was finalised and announced on the Saturday evening following polling day. This is in practical terms the earliest possible day to do so.

The scanning system was implemented by the Australian company SEMA.

After evaluating the operation of the scanning system, both during the election and in a post-election audit, Elections ACT has decided to retain the scanning system with minimal programming changes.

This evaluation has indicated that the scanning system performed extremely accurately, with the ICR scanning system performing according to the requirements. However, given the need for significant manual interpretation by human operators, the post-election audit identified a very small number of cases in which human errors may have resulted in incorrect preferences being recorded. The numbers identified were not sufficient to have changed any election outcomes.

As with any ballot paper counting process, it is very difficult to achieve 100% accuracy where humans are required to make decisions in a pressured environment involving large numbers of ballot papers. The scanning system has served to reduce the opportunity for human errors to occur, and those errors that were identified generally related to ballot papers where electors had made mistakes in numbering or had made extraneous marks on their ballot papers, or had very poor handwriting. It is estimated that the number of errors using the scanning system in 2008 was likely to be significantly less than the number of errors that would be expected using hand counting or manual data-entry.

However, as a result of the post-election evaluation, a number of procedural enhancements to improve the efficiency of the operation and use of the system have been identified. These will be implemented for the 2012 election. It is hoped that these procedural enhancements will further reduce the very small number of errors occurring to come as close as humanly possible to removing all errors from the process of counting handwritten ballots for ACT elections.

On-line ballot system (netVote)

One of the ACT Electoral Commission's statutory functions is to provide election and referendum services to other organisations on a fee-for-service basis.

The Commission conducts a wide range of ballots every year for not-for-profit organisations that have a significant ACT presence. These ballots include elections for universities and clubs, elections for health professionals boards and ballots for collective agreements, including most ACT government public service agencies.

The demand for these elections fluctuates significantly in accordance with the cyclical demands of the ballot requirements. Some ballots are conducted regularly every year, such as elections for the ANU Union and the ANU Students Association, whereas other ballots are held more infrequently, such as collective agreement ballots.

As the Commission has a small number of permanent staff members, these ad hoc ballots can impose significant workloads on staff. Casual staff are often employed as necessary to assist with these elections.

Currently these services are provided in the form of attendance polling or postal voting. Services are provided on a cost recovery basis, as well as a fee-for-time spent by permanent staff.

Increasingly, organisations are expecting the use of electronic techniques in the provision of electoral services. While attendance and postal voting are reliable voting systems, they are relatively costly for the client due to the need for casual staff in an attendance vote, or the cost of postage involved in a postal system. Administration of these processes is also time consuming for Commission management staff, which is in turn, again costly for the client.

It is also envisaged that the use of an online voting system could provide a greater level of legitimacy to ballot results through improvement to voter turnout rates and formality levels.

In order to meet client demand for on-line voting options and to reduce the impact of fee-for-service elections on the workload of the Commission's permanent staff, the Commission has worked with the developer of eVACS®, Software Improvements, to develop an online voting system.

The first phase of the online voting system, called netVote, is intended to cater for simple “yes/no” ballots such as enterprise agreement ballots. If funding permits and demand exists, a second phase development could see the system extended to cater for online ballots for candidates.

It should be noted that the Commission does not at this stage recommend adopting online voting facilities for ACT Legislative Assembly elections. While the Commission is satisfied that online voting security can be made sufficiently robust for comparatively minor ballots such as enterprise agreement ballots, the Commission is not satisfied that the benefits of extending online voting to Assembly ballots would outweigh the risks of exposing a parliamentary election to the possibility of being compromised by a security failure of an online voting system.

However, the Commission also notes that other Australian jurisdictions are beginning to offer limited online voting options for parliamentary elections. In time, it is likely that the security risks of online voting will be sufficiently mitigated as to overcome the Commission’s cautious approach to online voting for Assembly elections. The experience of the development and operation of netVote for minor elections in the ACT should serve to equip the ACT for moving into online voting for its parliamentary elections when the time is right.

Attachment A: Recommendations made in the ACT Electoral Commission's report on the 2008 election

The Commission made the following recommendations in its report.

Recommendation 1
The Commission **recommends** that the Electoral Act be amended to provide for the inclusion of an elector's year of birth and gender on the certified list of electors for an election.

Recommendation 2
Should the year of birth and gender be included on the certified list, the Commission **recommends** that the lists provided to candidates should exclude the year of birth and gender details, on privacy grounds.

Recommendation 3
The Commission **recommends** that the Legislative Assembly consider whether it is desirable to amend the Electoral Act to provide that candidates may be given electronic copies of the certified lists.

Recommendation 4
The Commission **recommends** that section 113 of the Electoral Act be amended to provide that where a candidate has qualified for the return of a nomination deposit, then the deposit is to be returned to the person who paid it or a person authorised in writing by the person who paid it, and, in the case of a candidate dying before polling day, to the person who paid it or a person authorised in writing by the person who paid it, or in any other case, the deceased's personal representative.

Recommendation 5
The Commission **recommends** that it would be prudent to amend the Electoral Act to explicitly provide for the format of the ballot paper where a party's candidates are split into two columns, to put the issue beyond doubt.

Recommendation 6
If the casual vacancy provisions in the Electoral Act are amended to remove any incentive to nominate more candidates than the number of vacancies, the Commission **recommends** that the Assembly consider amending the Electoral Act to prevent a party from nominating more candidates in an electorate than the number of vacancies.

Recommendation 7
The Commission **recommends** that the Electoral Regulation be amended to provide that the word "declaration" be printed adjacent to the words "ballot paper".

Recommendation 8
The Commission **recommends** that the requirement in the Electoral Act for a witness to sign a postal vote certificate be removed.

Recommendation 9
If the above recommendation is not accepted, then the Commission **recommends** that the requirement for the witness to observe the whole of the postal voting process by the voter be removed, and replaced with a requirement that the witness only witness the signing of the postal vote declaration by the voter.

Recommendation 10
The Commission **recommends** that the Assembly consider the arguments for and against amending the Electoral Act to provide that any elector may vote at a pre-poll voting centre, without the need to declare that they are unable to attend a polling place on polling day.

Recommendation 11
The Commission **recommends** that the Assembly consider whether an amendment to the Electoral Act is warranted to address the issue of authorisation of double-sided stickers containing electoral matter.

Recommendation 12
The Commission **recommends** that the offence of defamation of a candidate in section 300 of the Electoral Act be repealed.

Recommendation 13
The Commission **recommends** that the two disclosure issues (the proposal to require all political donations to be disclosed within 1 month of receipt and, in an election period, on a weekly basis; and proposals that may arise resulting from the Commonwealth Electoral Reform Green Paper on Donations, Funding and Expenditure) be considered, perhaps by a Legislative Assembly parliamentary committee, once the outcome of the Commonwealth review is known.

Recommendation 14
The Commission **recommends** that the penalty notice fine for failing to vote at ACT Legislative Assembly elections should be increased to, say, $25.

Recommendation 15
The Commission **recommends** that consideration be given to whether it would be desirable to amend the Electoral Act to provide that, where a casual vacancy arises and the vacating member was elected as a party candidate, and no unsuccessful candidates from that party apply to contest the vacancy, then the vacancy would be filled by the appointment method set out in section 195 of the Electoral Act.

Recommendation 16
The Commission **recommends** that, if the size of the Assembly is to be changed prior to the 2012 election, all necessary legislative changes should be made by October 2010.